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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0061-16T2

NEW JERSEY DIVISION  
OF CHILD PROTECTION  
AND PERMANENCY,

Plaintiff-Respondent,

v.

A.B.J. and T.E.,

Defendants,

and

D.B., SR.,

Defendant-Appellant.

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IN THE MATTER OF D.B. and  
T.E., minors.

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Submitted October 5, 2017 – Decided November 17, 2017

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Camden County,  
Docket No. FN-04-0200-16.

Joseph E. Krakora, Public Defender, attorney for appellant (Beth Anne Hahn, Designated Counsel, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Stephanie Kozic, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minors (David Valentin, Assistant Deputy Public Defender, on the brief).

PER CURIAM

In this Title 9 matter, defendant D.B.<sup>1</sup> appeals from the Family Part's July 26, 2016 order memorializing the court's determination that he abused or neglected his son, D.B. Jr. ("David") by abandoning the child as contemplated by N.J.S.A. 9:6-8.21(c)(5). On appeal, defendant argues that the weight of the evidence did not support the court's finding because he did not forsake his parental responsibilities, and the deterioration of his relationship with his son was merely an unintended consequence of his financial instability. He also argues that plaintiff, the New Jersey Division of Child Protection and Permanency (Division), "failed to make reasonable efforts to prevent placement and . . . to reunify [defendant] with his son or otherwise preserve the father-son relationship." We disagree and affirm.

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<sup>1</sup> We use initials and pseudonyms to protect the family's privacy.

The salient facts developed at the fact-finding hearing are summarized as follows. Defendant, David's mother (Alice),<sup>2</sup> David and his ten-year-old sister Debbie lived together as an intact family until early 2013. At the time, David was fifteen years old, and attending high school. Alice provided a major part of the family's income until she decided that year to leave to live with a different man.

Soon after Alice left, defendant began to experience financial hardships. Eventually, David's sister went to live with her maternal grandmother while David remained with defendant in the home. Defendant however would leave David alone for days without supervision or provisions. Defendant began to abuse alcohol, and each day he became less able to respond to David's basic needs.

In early 2014, the power to defendant's home was turned off, which forced David to seek shelter elsewhere. In the spring, David chose to move in with his friend and his friend's mother (Betty), instead of living with defendant at a relative's home. David believed that this would be a temporary arrangement, but after he began to lose contact with defendant, he returned to their home in September only to find it padlocked. David was

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<sup>2</sup> David's mother, defendant A.B.J., did not join defendant in his appeal of the Family Part's decision.

never able to return home. He remained with Betty who provided for all of his needs.

Initially, defendant maintained some contact with David while his son stayed with Betty. He attended some of his son's football games and appeared on David's prom night. However, defendant never attempted to speak to Betty or to make any arrangement or contribution for David's care. When it became apparent that defendant was not going to care for David, Betty contacted the Division, which initially responded that it would remove David from her care, a result Betty was not seeking.

Later, to keep David enrolled in school, Betty needed defendant to sign an affidavit confirming the family's homelessness. When she spoke to defendant, Betty encouraged him to come to her home to spend time with David. Defendant chose not to visit his son although he lived nearby.

The next year, Betty became concerned about David's medical insurance. Eventually, it became apparent that in order for David to have health insurance, the Division would have to get involved. Betty knew the Division would not approve her as a caretaker for David because the father of her two youngest children had a criminal record. She asked another woman (Jean), whose son was also David's friend, to become David's caretaker and Jean agreed.

While transitioning from Betty's home to Jean's, David became ill, and needed defendant, who was still his legal guardian, to accompany him to a local medical facility. Betty and Jean located defendant and he accompanied them to the local urgent care facility. Defendant never made any inquiry as to the status of either family's care for his son or his living arrangements.

In July 2015, Jean notified the Division that David was living with her. A caseworker interviewed David. During the interview, David stated that he had no relationship with defendant. The Division instituted the underlying action, and obtained an order awarding it custody of David and permitting him to continue living with Jean. David lived with Jean but also spent time at Betty's home. He came to consider them as his "two mothers."

At the ensuing fact-finding hearing, Judge Angelo J. DiCamillo heard testimony from the Division's caseworker, Betty, Jean, David, and defendant. David and defendant testified as to the nature of their relationship and its deterioration, which led to David's placement.

David testified that, although technically his parents had abandoned him, he knew they could not care for him "even if they wanted to." He explained that it was his decision to move in with Betty after defendant was evicted. He also reported turning down defendant's invitation to stay with him at a family member's home

because he "felt like it was[ not] the best decision for [him]." He preferred the stability of living with his friends' families.

David also lamented the loss of his relationship with defendant, which he once described as close. He mentioned that he resented hearing other family members talk about spending time with defendant, who lived nearby but never came to visit David. "[I]t bothered [him] that [defendant] never tried to look for [him.]" Notwithstanding defendant's lack of effort, David stated that he had "tried to build a relationship" because he "want[ed] a relationship with [his] dad again." At times, David wished that he could have conversations with defendant, but hesitated to call him because defendant was the parent in the relationship, not the other way around.

Defendant denied abandoning David. According to defendant, he loved his son, and he attempted to maintain contact with him and attend his football games, but their separation placed inevitable strain on their relationship. He admitted he did not contact Betty or Jean about David, but claimed he knew that his son was in good hands and would not "get[] in trouble" living with them.

After considering the testimony, and the provisions of N.J.S.A. 9:6-8.21(c)(5), Judge DiCamillo concluded defendant had abused or neglected David by abandoning him. He found that

defendant had willfully forsaken his son when he failed to maintain a relationship with him. According to the judge, defendant's poverty did not excuse his failure to "act[] as a father" to David. Defendant could have "walked [to the house where David lived] once a week to see [his son]. He could have developed a relationship." Instead, defendant ignored his "responsibility to be a father to [his son]," by not "reach[ing] out . . ., visit[ing] the child, talk[ing] to him, [or] see[ing] what[ is] going on." Judge DiCamillo determined, in doing so, defendant had willfully forsaken his parental duties to David, which constituted abandonment.<sup>3</sup> This appeal followed.

We begin our review by recognizing it is limited and narrow. In recognition of the special expertise of Family Part judges in matters of parental abuse and neglect, we defer to findings supported by "substantial credible evidence in the record." N.J. Div. of Youth & Family Servs. v. L.L., 201 N.J. 210, 226 (2010). We intervene, however, to ensure fairness if the judge's "conclusions are 'clearly mistaken or wide of the mark.'" Id. at 227 (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). "Where the issue to be decided is an 'alleged

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<sup>3</sup> The court, sua sponte, also found that the Division "dropp[ed] the ball" by "fail[ing] to help this child out" when Betty called in 2014.

error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom,' we expand the scope of our review." N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007) (quoting In re Guardianship of J.T., 269 N.J. Super. 172, 188-89 (App. Div. 1993)). The trial judge's interpretation of the law and the application of such legal conclusions to the facts are subject to plenary review. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). In our review, we consider the totality of the circumstances in abuse or neglect proceedings. N.J. Div. of Youth & Family Servs. v. P.W.R., 205 N.J. 17, 39 (2011).

"New Jersey's child-welfare laws balance a parent's right to raise a child against 'the State's parens patriae responsibility to protect the welfare of children.'" N.J. Div. of Child Prot. & Permanency v. Y.N., 220 N.J. 165, 178 (2014) (quoting N.J. Dep't of Children & Families v. A.L., 213 N.J. 1, 17-18 (2013)). "The adjudication of abuse or neglect is governed by Title 9, which is designed to protect children who suffer serious injury inflicted by other than accidental means." N.J. Div. of Youth & Family Servs. v. S.I., 437 N.J. Super. 142, 152 (App. Div. 2014) (citing G.S. v. Dep't of Human Servs., 157 N.J. 161, 171 (1999)); see also N.J.S.A. 9:6-8.21 to -8.73. Title 9 is intended to safeguard



children who have been abused or are at risk of imminent harm.  
A.L., supra, 213 N.J. at 18, 22.

"Strict adherence to the statutory standards . . . is important because the stakes are high for all parties concerned." Y.N., supra, 220 N.J. at 179. Consequently, whether a parent has engaged in acts of abuse or neglect is considered on a case-by-case basis and must be "analyzed in light of the dangers and risks associated with the situation," N.J. Dep't of Children & Families v. R.R., 436 N.J. Super. 53, 58 (App. Div. 2014) (quoting G.S., supra, 157 N.J. at 181-82), and evaluated "at the time of the event that triggered the Division's intervention." N.J. Dep't of Children & Families v. E.D.-O., 223 N.J. 166, 170 (2015).

Under Title 9, a child is "abused or neglected" when a child "has been willfully abandoned by his parent or guardian." N.J.S.A. 9:6-8.21(c)(5). A parent or guardian willfully abandons a child by committing any of the following acts:

(a) [W]illfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

[N.J.S.A. 9:6-1 (emphasis added).]

In addition:

[A]bandonment does not necessarily . . . imply that the parent has deserted the child, or even ceased to feel any concern for [the child's] interests. It fairly may . . . import any conduct on the part of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.

[Lavigne v. Family & Children's Soc'y, 11 N.J. 473, 480 (1953) (emphasis added) (quoting Winans v. Luppie, 47 N.J. Eq. 302, 304 (Ct. Err. & App. 1890)).]

"Abandonment requires a finding that parents, although physically and financially able to care for their children, willfully forsook their parental responsibilities. The concept of abandonment entails a willful surrender or intentional abdication of parental rights and duties." In re Guardianship of K.L.F., 129 N.J. 32, 39 (1992) (citations omitted). "The word 'willfully' in the context of this statute means intentionally or purposely as distinguished from inadvertently or accidentally." State v. Burden, 126 N.J. Super. 424, 427 (App. Div.), certif. denied, 65 N.J. 282 (1974).

A parent's lack of income cannot be relied upon as the sole basis for a finding of abandonment. Poverty is insufficient to support a finding of child abuse or neglect. N.J. Div. of Child Prot. & Permanency v. L.W., 435 N.J. Super. 189, 195 (App. Div.

2014) (citing Doe v. G.D., 146 N.J. Super. 419, 430-31 (App. Div. 1976)). The question to be answered is whether the parent did all that was possible to provide for his or her child's material and emotional support given the circumstances. See, e.g., L.W., 435 N.J. Super. at 196 (reversing a finding of abuse or neglect where an impoverished mother "did the responsible thing" by seeking "housing through government agencies[, seeking] employment to no avail [and] coming to the Division for help instead of subjecting her children to further homelessness"); see also In re Guardianship of J.C., 129 N.J. 1, 11 (1992) (reversing a termination of parental rights where a mother continued to demonstrate support for her children after their placement in foster care by "show[ing] an interest in her children . . . visiting them regularly and frequently").

At a fact-finding hearing, N.J.S.A. 9:6-8.44, the burden is on the Division to prove by a preponderance of the "competent, material and relevant evidence," N.J.S.A. 9:6-8.46(b)(2), that the parent failed to provide support and care. P.W.R., supra, 205 N.J. at 32. In assessing the proofs, we focus "on the harm to the child." G.S., supra, 157 N.J. at 180. We observe that the conduct of a parent or guardian is assessed "in context based on the risks posed by the situation." N.J. Dep't of Children & Families v. T.B., 207 N.J. 294, 309 (2011).

Applying these guiding principles, we conclude that Judge DiCamillo's finding of abuse or neglect was supported by substantial credible evidence. Defendant's arguments challenging the judge's finding of abandonment are without sufficient merit to warrant [further] discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reason expressed by Judge DiCamillo in his oral decision.

We choose to not consider defendant's claim that his abandonment of his child was caused by the Division's inaction because he did not raise that argument before the trial judge. "[I]ssues not raised [before the trial judge] will ordinarily not be considered on appeal unless they are jurisdictional in nature or substantially implicate the public interest." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 339 (2010) (citing Cty. of Essex v. First Union Nat'l Bank, 186 N.J. 46, 51 (2006)). We only note that, although Judge DiCamillo took issue with the Division for not responding to Betty's initial call regarding David living with her, its failure did not frame defendant's decision to leave his son's care and support to others while he did nothing to improve his circumstances so that he could care for or even stay in contact with his child.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION